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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/707,770

01/11/2004

Markus Hildinger

MP3

1769

37439

7590

03/21/2008

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EXAMINER

AHMED, AFFAF

ART UNIT

PAPER NUMBER

3622

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/707,770	<b>Applicant(s)</b> HILDINGER ET AL.	
	<b>Examiner</b> AFAF AHMED	<b>Art Unit</b> 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/11/2004</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Status of Claims***

1. This action is in reply to the application filed on 01/11/2004.
2. Claims 1 and 2 are currently pending and have been examined.

### ***Claim Objections***

3. Claims 3-23 are objected to because of the following informalities: Claims 3-23 are objected to under 37 CFR 1.75 (c) as being in improper form because a multiple dependent claim should refer to others claims in the alternative only, and/or can not depend from any other multiple dependent claim.
4. . See MPEP § 608.01 (n). Accordingly, the claims 3-23 not been treated on the merits. Appropriate correction is required.
5. Claims 24-45 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 1-23. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(K).

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 2 recite a method and a system for selling and/ or distributing a digital audio file. It is unclear whether applicant is referring to a method or a system. Appropriate correction and or clarification is required.
8. claim 2 recites the limitations of :
  - is located within (interrupts) the music entertainment part and or
  - is overlaid (superimposed) on the music entertainment part.

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It is unclear whether applicant is claiming interrupts the music entertainment part and superimposed on the music entertainment part. Appropriate correction and/ or clarification is required.

9. **Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 2, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Weisberg et al US Pat no: 6,351,736.

As per **claims 1 and 24**, Weisberg teaches:

- *an advertisement message part in a digital audio format and a music entertainment part in a digital audio format (see at least column 1, lines 66-67 and column 2, lines 1-4.*

As per **claims 2 and 25**, Weisberg teaches:

- *wherein said advertisement message part is located directly precedes the music entertainment part or directly follows the music entertainment part and or is located within the music entertainment part or is overlaid on the music entertainment part and or overlaps with the music entertainment part (see at least column 2, lines 41-50.*

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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- Bolanos et al US pat no: 5,793,364, teaches a method and system for associating playback of multiple audio visual programs with one graphics interface element
- Van Hoff et al U S pat no: 5,959,623, teaches system and method for displaying user selected set of advertisements.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Affaf Ahmed whose telephone number is 571-270-1835. The examiner can normally be reached on Monday - Friday, 8:30 am-6:00 pm est, alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached at 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AA

/Yehdega Retta/

Primary Examiner, Art Unit 3622